

AN ACT
RELATING TO SMALL BUSINESS AND DISADVANTAGED BUSINESS
ENTERPRISE CONTRACTS WITH THE DEPARTMENT OF TRANSPORTATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 314.13, Code 2009, is amended to read as follows:

314.13 Definitions.

As used in [this chapter](#), unless the context otherwise requires:

1. "Agency" means any governmental body which exercises jurisdiction over any road as provided by law.

2. "Committee" means the integrated roadside vegetation management technical advisory committee created in [section 314.22](#).

3. "Coordinator" means the integrated roadside vegetation management coordinator.

4. "Department" means the state department of transportation.

5. "Disadvantaged business enterprise" means a small business which meets both of the following:

a. The business is at least fifty-one percent owned by one or more socially and economically disadvantaged individuals.

b. The management and daily business operations of the business are controlled by one or more of the socially and economically disadvantaged individuals who own the business.

~~5.~~ 6. "Highway" or "street" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

7. "Prequalified" means that a small business has been

approved by the department as a small business, is a recognized contractor engaged in the class of work provided for in the plans and specifications, possesses sufficient resources to complete the work, and is able to furnish a performance bond for one hundred percent of the contract.

8. "Small business" means any enterprise, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than four million dollars computed as the average of the three preceding fiscal years. This definition does not apply to any program or activity for which a definition for small business is provided for the program or activity by federal law or regulation or other state law.

9. "Socially and economically disadvantaged individual" means an individual who is a citizen of the United States or who is a lawfully admitted permanent resident of the United States and who is a woman, Black American, Hispanic American, Native American, Asian-Pacific American, Asian-Indian American, or any other minority person or individual found to be disadvantaged by the United States small business administration. However, the department may also determine, on a case-by-case basis, that an individual who is not a member of one of the enumerated groups is a socially and economically disadvantaged individual. A rebuttable presumption exists that individuals in the following groups are socially and economically disadvantaged:

a. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

b. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the United States trust territories of the Pacific Islands, and the Northern Marianas, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Micronesia, or Hong Kong.

c. "Black Americans", which includes persons having origins in any of the black racial groups of Africa.

d. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.

e. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

Sec. 2. NEW SECTION. 314.13A Contract assessment

— socially and economically disadvantaged individuals.

1. The department shall annually assess the impact of federal and nonfederal awarded contracts on socially and economically disadvantaged individuals, including women and persons with a disability, as defined in section 15.102, in the state.

2. The assessment shall include the following:

a. Any disproportionate or unique impact the contract may have on socially and economically disadvantaged individuals in the state.

b. A rationale for the contract having an impact on socially and economically disadvantaged individuals in the state.

c. Consultation with representatives of socially and economically disadvantaged individuals in cases where the contract has an identifiable impact on socially and economically disadvantaged individuals in the state.

3. This section shall be carried out to the extent consistent with federal law.

4. The assessment shall be used for informational purposes.

Sec. 3. Section 314.14, Code Supplement 2009, is amended to read as follows:

314.14 Contracts set aside for disadvantaged business enterprises small businesses.

1. ~~Definitions.~~ As used in this section:

a. ~~"Disadvantaged business enterprise" means a small business concern which meets either of the following:~~

~~(1) Is at least fifty-one percent owned by one or more socially and economically disadvantaged individuals.~~

~~(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.~~

b. ~~"Small business concern" means a business which is independently owned and operated and which is not dominant in its field of operation.~~

c. ~~"Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States or who are lawfully admitted permanent residents and who are African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or any other minority or individuals found to be disadvantaged by the United States small business administration. However, the department may also determine, on a case-by-case basis, that an individual who is not a member of one of the enumerated groups is socially~~

~~and economically disadvantaged. A rebuttable presumption exists that individuals in the following groups are socially and economically disadvantaged:~~

~~(1) "African Americans" which includes persons having origins in any of the black racial groups of Africa.~~

~~(2) "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.~~

~~(3) "Native Americans" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.~~

~~(4) "Asian-Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the United States Trust Territories of the Pacific, and the Northern Marianas.~~

~~(5) "Asian-Indian Americans" which includes persons whose origins are from India, Pakistan, and Bangladesh.~~

~~d. "Prequalified" means that the disadvantaged business enterprise is currently approved by the department as a disadvantaged business enterprise, is a recognized contractor engaged in the class of work provided for in the plans and specifications, possesses sufficient resources to complete the work, and is able to furnish a performance bond for one hundred percent of the contract.~~

~~2. Set-aside.~~ Notwithstanding [section 314.1](#), there may be set aside contracts for bidding by prequalified disadvantaged business enterprises small businesses a percentage of the total annual dollar amount of public contracts let by the department. The annual dollar amount set aside for bidding by prequalified ~~disadvantaged business enterprises~~ small businesses shall not exceed ten percent of the total dollar amount of federal aid highway construction contracts let by the department and federal aid transit dollars administered by the department. The director may estimate the set-aside amount at the beginning of each fiscal year and a suit shall not be brought by any party as a result of this estimate. Set-aside contracts will be awarded to the lowest responsible prequalified disadvantaged business enterprise small business. [This section](#) shall not be construed as limiting the department's right to refuse any or all ~~disadvantaged business enterprise~~ small business bids.

Sec. 4. PARTICIPATION GOALS — SMALL BUSINESSES AND DISADVANTAGED BUSINESS ENTERPRISES.

1. The department of transportation, in cooperation with organizations that represent highway contractors, shall submit

recommendations to the general assembly and the governor by November 1, 2010, concerning methods to track and assess the participation of small businesses and disadvantaged business enterprises in receiving nonfederal highway funding. The recommendations may include methods to assess the effort on the part of contractors to achieve participation by small businesses and disadvantaged business enterprises and may involve the establishment of participation goals. Following the consideration and adoption of recommendations by the general assembly, the department shall annually review the small business and disadvantaged business enterprise participation achievements of contractors who were awarded contracts for nonfederal aid highway projects with the department.

2. The department shall work in cooperation with organizations that represent highway contractors, small businesses, and disadvantaged business enterprises to maintain communication among the entities to further the dissemination of information about contract and training resources that are available from the department.

PATRICK J. MURPHY
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2460, Eighty-third General Assembly.

MARK BRANDSGARD
Chief Clerk of the House

Approved _____, 2010

CHESTER J. CULVER

Governor